Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Dr. TENKASI M. VISWANATHAN --- PETITIONER

VS.

THE FAYETTEVILLE STATE UNIVERSITY

BOARD OF TRUSTEES et al. --- RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Dr. Tenkasi M. Viswanathan, Pro Se
65 Magnolia Lane
Chadbourn NC 28431
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84 pp

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APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-1735

Dr. Tenkasi M. VISWANATHAN,

Plaintiff-Appellant,

versus

FAYETTEVILLE STATE UNIVERSITY BOARD OF TRUSTEES, DR. LLOYD V. HACKLEY, Chancellor of Fayetteville State University, in his official and individual capacity; Dr. JON YOUNG in his official and individual capacity,

Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina at Wilmington. W. Earl Britt, District Judge. (CA-96-160-7-BR)

Submitted: September, 11197 Decided: September 19, 1997

Before RUSSELL, MURNAGHAN, and HAMILTON, Circuit Judges.

Affirmed by unpublished per curiam opinion

T.M. Viswanathan, Appellant Pro Se. Celia Grasty Jones, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals the district court's orders dismissing his civil complaint. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Viswanathan v. Fayetteville State University Bd. Of Trustees, No. CA-96-160-7-BR (E.D.N.C. Apr. 29, 1997.) We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

UNITED STATES DISTRICT COURT
ESTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:96-CV-160-BR(3)

FILED APRIL 29, 1997
DAVID W. DANIEL, CLERK
U.S. DISTRICT COURT
E.DIST NO. CAR.

Dr. TENKASI M. VISWANATHAN)
Plaintiff,)
)
v.)
)
THE FAYETTEVILLE STATE)
UNIVERSITY BOARD OF TRUSTEES,)
the Chancellor of Fayetteville State)
University, DR. LLOYD V. HACKLEY)
in his official and individual capacity,)
and Dr. JON YOUNG in his official and)
individual capacity)
Defendants)

JUDGMENT

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED AND DECREED that defendants' motion for summary judgment is **GRANTED** and this matter is DISMISSED as to all defendants. (BRITT, J.)

THIS JUDGMENT FILED AND ENTERED ON APRIL 29, 1997 & COPIES TO:

Tenkasi M. Viswanathan
7405 Alcoa Way
Wilmington, NC 28405

Celia Grasty Jones
Asst. Attorney General
P.O. Box 629
Raleigh, NC 27602-0629

April 29, 1997

DAVID W. DANIEL, CLERK
(Sd.) _____
(By) Deputy Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
ESTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:96-CV-160-BR(3)
FILED APRIL 28, 1997
DAVID W. DANIEL, CLERK
U.S. DISTRICT COURT
E.DIST NO. CAR.

Dr. TENKASI M. VISWANATHAN Plaintiff,	)
v.	)
THE FAYETTEVILLE STATE UNIVERSITY BOARD OF TRUSTEES, the Chancellor of Fayetteville State University, DR. LLOYD V. HACKLEY in his official and individual capacity, and Dr. JON YOUNG in his official and individual capacity Defendants	)

ORDER

This matter is before the Court on defendants' Motion to dismiss pursuant to Rule 12(b)6 of the Federal Rules of Civil Procedure. Plaintiff, proceeding pro se, filed a response. Defendants did not file a reply, and the time in which to do so has passed. This matter is now ripe for decision.

I. BACKGROUND

Plaintiff, Dr. Tenkasi M. Viswanathan, was employed by Fayetteville State University ("FSU") as an Associate Professor in the Department of Mathematics and Computer Science pursuant to an initial one-year contract for the 1989-1990 academic year. By letter dated 8 February 1990

defendant Lloyd V. Hackley ("Hackley") then Chancellor of FSU, officially notified plaintiff that he would not be reappointed for the 1990-91 academic year. Plaintiff pursued FSU's internal procedures for the review of non-reappointment decisions, and appealed the non-reappointment to the FSU Hearing and Reconsideration Committee. The Hearing and Reconsideration Committee recommended that plaintiff be reappointed for a second one-year term. Defendant Hackley declined to accept this recommendation, and plaintiff was not reappointed[1].

Plaintiff appealed his non-reappointment to the FSU Board of Trustees ("the Board") which upheld Hackley's decision. Plaintiff next appealed the Board's affirmance of his non-reappointment to the Board of Governors of the University of North Carolina. They held a hearing, made factual findings, and concluded that plaintiff be allowed to submit an application to FSU for reappointment.

---

[1] Pursuant to Tenure Policies and Regulations of FSU, the Chancellor has final authority with respect to decisions regarding reappointment, and non-reappointment of contract faculty. Tenure Policies and Regulations – Fayetteville State University, Section 3(C)(1).

On September 28, 1991, plaintiff requested reappointment. By 15 February 1992, plaintiff had not herd from FSU regarding this request, so he again appealed to the Board of Governors of the University of North Carolina. In response, they set a date of 8 May 1992 by which time FSU had to act upon plaintiff's request for reappointment.

In early March 1992, members of FSU's Department of Mathematics and Computer Science recommended plaintiff be reappointed; however, defendant Jon Young ("Young"), Dean of FSU's College of Arts and Sciences, disagreed with the departmental recommendation. On 6 May 1992, Hackley decided not to reappoint plaintiff. Plaintiff again appealed this decision to the Hearing and Reconsideration Committee and was again recommended for reappointment. Hackley again declined to accept the recommendation, and plaintiff was not reappointed. Plaintiff again appealed to the Board of Governors of the University of North Carolina, which upheld Hackley's decision.

Plaintiff filed a lawsuit in the Middle District of North Carolina alleging that FSU's refusal to reappoint him violated his constitutional rights under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C., Sections 1981 and 1983. The Honorable Hiram Ward dismissed these claims pursuant to Rule 12(b)(6)[2]. Plaintiff then filed post-judgment motions pursuant to Rules 52(b) and 59(e) which were denied. Plaintiff next appealed Judge Ward's decision to the United States Court of Appeals for the Fourth Circuit which denied plaintiff's Rule 60(b) motion and affirmed Judge Ward's decision. Plaintiff has filed a petition for writ of certiorari in the United States Supreme Court which is currently pending.

---

[2] The court notes that plaintiff's claims in the instant case are very similar to those alleged in plaintiff's action filed with the Middle District of North Carolina, such that the instant action may be barred by the doctrine of res judicata. However, because defendants did not brief this issue, and the court has determined that plaintiff's complaint should be dismissed on other grounds, the court does not address the application of that doctrine.

Plaintiff has pursued state law judicial review of his administrative appeal against the same defendants in Superior Court in Mecklenburg and New Hanover Counties[3]

On 7 October 1996, plaintiff filed the instant action alleging claims pursuant to 42 U.S.C., Sections 1981 and 1983 and state law breach of contract claims arising out FSU's decision not to reappoint him after the expiration of his contract for the 1989-1990 academic year.

II. STANDARD

For the purposes of a motion made pursuant to Rule 12(b)(6), plaintiff's factual allegations must be taken as true. Republican Party of North Carolina v. Martin, 980 F.2d 943, 952 (4th Cir. 1992), cert. Denied sub nom., Hunt v. Republican Party of North Carolina, 510 U.S. 828 (1993). The Fourth Circuit has stated that "a motion to dismiss for failure to state a claim for relief should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under

---

[3] Plaintiff's filings in Mecklenburg Court became so numerous Superior Court Judge Raymond Warren issued an order on 1 August 1996 pursuant to Rule 11(a) of the North Carolina Rules of Civil Procedure, sanctioning plaintiff for expenses incurred by

any state of facts which would be proved in support of his claim." Rogers v. Jefferson-Pilot Life Ins. Co., 883 F.2d 324 (4th Cir. 1989).

Applying Rogers, the question becomes whether the complaint, taken in the light most favorable to the plaintiff complies with Rule 8(a)(2) and establishes that plaintiff is entitled to relief. Dismissal is justified where plaintiff can prove no set of facts which entitle him to relief. See Conley v. Gibson, 355 U.S. 41 (1957). It is also true that a complaint showing that relief is barred by an affirmative defense, such as an applicable statute of limitations, can be subject to dismissal under Rue 12(b)(6). See, e.g., Herron v. Herron, 255 F.2d 589 (5th Cir. 1958).

Defendants assert that plaintiff's claims are barred by the statute of limitations. In support of this assertion, defendants submitted to the court various documents, including declarations, which were outside the pleadings. Because of the submission of such documents, the court must

---

defendants because of frivolous motions filed by plaintiff. Plaintiff has failed to comply

treat defendants' motion to dismiss as one for summary judgment. Fed. R. Civ. P. 56. Plaintiff's response included declarations and exhibits outside of the pleadings as well.

A motion for summary judgment may be granted where there are no genuine issues of material facts, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Pachally v. City of Lynchburg, 897 F.2d 723, 725 (4th Cir. 1990).

III. DISCUSSION

Defendants contend that they are entitled to judgment as a matter of law on the grounds that the statute of limitations has run on all plaintiff's claims as of February 1993. Specifically, defendants assert that the appropriate statute of limitations for the federal civil rights claims and state breach of contract claim is three years, and that this time began to run on 8 February 1990 when plaintiff first received notice that he would not be reappointed. Plaintiff's voluminous submissions

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with that order.

to this court in opposition to defendants' motion do not respond to this argument.

Federal civil rights statutes do not provide specifically for limitations on the time in which claims thereunder must be brought. 42 U.S.C., Sections 1981, 1983. Therefore, the proper statute of limitations for such claims must be borrowed from the state statute of limitations wherein the claim arose. Wilson v. Garcia, 471 U.S. 261 (1985); McCausland v. Mason County Bd. Of Educ., 649 F.2d 278 (4th Cir.), cert. Denied, 455 U.S. 1098 (1981); see also 42 U.S.C., Section 1988 (requiring federal courts to borrow statute of limitation from state where claim arose).

Under North Carolina law, the statute of limitation for an action based "[u]pon a liability created by statute, either state or federal" is three years. N.C. Gen. Stat. Section 1-52(2) (1996). Therefore the proper limitation period for plaintiff's claim is three years[4]. See Cox v. Stanton, 529 F.2d 47 (4th Cir.

[4] In McCausland, the court applied the West Virginia statute of limitations for personal injury actions to plaintiff's civil rights claim because West Virginia did not have a statute specifically establishing a limitations period for claims based on alleged civil rights

1975) (affirming district court determination that three year limitation under N.C. Gen. Stat., Section 1-52(2) is proper for civil rights statutory claims). While state law must be applied to determine the relevant time limitation for federal civil rights actions, the time of the accrual of a federal civil rights claim is uniquely a question of federal law. Id. At 50, (citing Kaiser v. Cahn, 510 F.2d 282 (2nd Cir. 1974)); Vanderboom v. Sexton, 422 F.2d 1233 (4th Cir. 1970).

It is settled law that a statute of limitations begins to run when "plaintiff knows or has reason to know of the injury which is the basis of the action." Cox, 529 F.2d at 50 (4th Cir. 1975); DeCostello v. International Bhd. Of Teamsters, 588 F.Supp. 902 (D.Md. 1984). Further, the Supreme Court has held that employment actions brought under federal civil rights statutes accrue from the date of the allegedly discriminatory

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violations. North Carolina similarly does not have a statute creating a time limitation for claims based upon civil rights violations; however, N.C. Gen. Stat., Section 1-52(2) establishes a three year limitation for actions based on federal statutes, and the court has determined this statute to be applicable in the instant case. Further, the North Carolina statute of limitations for injury actions is also three years. N.C. Gen. Stat., Section 1-

discharge. Delaware State College v. Ricks, 449 U.S. 250 (1980) (filing period began to run when tenure decision communicated to professor); see also St. Amant v. Benoir, 896 F.2d 1294 (5th Cir. 1987) (civil rights claim accrued date plaintiff received notification of denial of job transfer); Riel v. Reed, 760 F.Supp. 852 (D. Colo. 1991)(limitation period began to run date employee notified of adverse decision).

The running of a limitation period in civil rights actions may be tolled, but only in the presence of a barrier to bringing the action, or a well-defined exception established by judicial authority. Jolivet v. Elkins, 386 F.Supp. 261 (D.Md. 1974). The pursuit of grievance procedures or administrative appeals does not toll the limitations period, as they are merely remedies for a prior decision and not an opportunity to influence a decision. Ricks, 449 U.S. at 258.

Based on the above case precedent, any civil rights claim plaintiff may have had as a result of his non-reappointment to the FSU faculty began to run on 8 February

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52(16). Regardless of which of these statutes is applied, the result in the case at bar woul

1990, the date he received notice of the non-reappointment. As of that date, plaintiff was indisputably aware that he was not going to be employed by FSU for the upcoming academic year. Plaintiff's attempt to assert that he was notified of his non-reappointment by letter from the FSU Board of trustees dated 14 October 1993 is disingenuous. This letter is simply one of several similar letters which resulted from plaintiff's series of appeals to various administrative bodies and does not constitute the date on which plaintiff's claim accrued.

Further, Judge Ward's Order of 1 March 1996 unequivocally put plaintiff on notice that the legally operative date of his discharge was 8 February 1990, the date of the official notice of non-reappointment from Hackley.

The statute of limitations for breach of contract claims under North Carolina law is three years. N.C. Gen. Stat., Section 1-52(1). As established above, plaintiff received notice of his non-reappointment from Hackley on 8 February 1990. Any breach of contract claim which he may have had

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be the same.

against defendants would have begun to run from that date. His attempt to assert any such claim in this action clearly outside of the limitations period and must be dismissed[5].

There is no dispute that plaintiff first received official notice of his non-reappointment on 8 February 1990. As explained above, the law dictates that this date be used to calculate the beginning of the limitations period. As also explained above, the applicable limitations period is three years. Plaintiff's claims herein were filed on 7 October 1996, well more than three years after the operative date. As such, plaintiff's claims are barred, and defendants are entitled to judgment as a matter of law.

IV. CONCLUSION

For the reasons stated above, defendants' motion for summary judgment is GRANTED and this matter is DISMISSED as to all defendants.

---

[5] Defendants also assert that the Eleventh Amendment to the United States Constitution would bar plaintiff's civil rights and breach of contracts claims against FSU and Hackley and Young in their official capacities because they would enjoy immunity as state officials

This 28 April 1997.

W. EARL BRITT
United States District Judge

tmv/fsu/krh

APPENDIX B

THE UNIVERSITY OF NORTH CAROLINA

General Administration

P.O. Box 2688

Chapel Hill 27515-2688

ELIZABETH BUNTING
Special Assistant to the President

TELEPHONE: (919)962-1000

Confidential

September 16, 1991

Dr. T. M. Viswanathan
Blues Farm Road 1332, Apt. 15
Laurinburg, NC 28352

Dear Dr. Viswanathan:

On Friday, September 13, 1991, the Board of

Because the court has determined that all of plaintiff's claims as to all defendants are barred by the statute of limitations, it does not address this argument.

Governors considered and decided your appeal from the decision of the Board of Trustees of Fayetteville State University. I have enclosed the report adopted by the Board. In summary, the Board found that the decision not to reappoint you could have been based upon an impermissible reason under section 604 of the Code of the University.

Accordingly, the Board reversed the non-reappointment decision and remanded this case back to FSU. As directed by the Board, if you now wish to seek reappointment, you should make such a request to Chancellor Hackley. Such a review would thereafter be initiated at the departmental level.

This notice to you will complete the Board of Governors procedures and action with regard to this case. Please call me if you have questions about this letter or the Board's report.

Sincerely,

(Sd.) _____
Elizabeth C. Bunting

THE UNIVERSITY OF NORTH CAROLINA is composed
of the sixteen public senior institutions in
North Carolina
An Equal Opportunity/Affirmative Action Employer

APPENDIX B

REPORT OF THE COMMITTEE ON PERSONNEL AND TENURE IN THE MATTER OF THE APPEAL OF DR. T.M. VISWANATHAN FAYETTEVILLE STATE UNIVERSITY

ADOPTED BY THE BOARD ON September 13, 1991

Professor Viswanathan was appointed to a one-year tenure-track position as an Associate Professor in the Department of mathematics and Computer Science at Fayetteville State University for the 1989-90 academic year. By letter dated February 8, 1990, he was given timely notice that he would not be reappointed to a second one-year term. He then appealed this decision and was granted a hearing before the FSU Hearing and Reconsideration Committee. At hat hearing, he contended that the decision not to reappoint was based upon personal malice and also that the decision

was an act of retaliation for the exercise of his First Amendment rights.

The Hearing and Reconsideration Committee held the requested hearing on May 8, 1990, and at its conclusion, recommended that the non-renewal decision be reversed; the Committee specifically recommended a "one-year renewal" of Professor Viswanathan's contract. Chancellor Hackley declined to accept this recommendation in a letter dated August 24, 1990, and an appeal was then lodged with the FSU Board of Trustees. After a hearing, that Board upheld the Chancellor's decision. Professor Viswanathan then appealed to the Board of Governors. The matter was referred to this Committee as required by Section 301D of the Code [of the University of North Carolina]. After some discussion, the parties agreed on the content of the record and submitted written arguments in support of their contentions. The matter was then referred to a subcommittee composed of Mr. Pat Taylor, Mr. Adams and Mr. Spaulding.

The subcommittee met on Thursday September 12,

1991, reviewed the record on appeal, considered the written statements of the parties and received their oral presentation. Based upon that record and review, the Committee on Personnel and tenure has received and approved the following subcommittee findings and recommendations.

At the evidentiary hearing before the FSU Hearing and Reconsideration Committee, Professor Viswanathan submitted evidence which tends in summary to show the following chronology:

(1) In the early fall of 1989, Professor Viswanathan made statements at several meetings of the faculty which were quite critical of the academic administration at FSU.

(2) During December 1989, the tenured faculty of the Department of Mathematics and Computer Science recommended that Dr. Viswanathan be reappointed.

(3) On November 11, 1989, the Department Chair of Mathematics and Computer Science signed an evaluation

which recommended Dr. Viswanathan for reappointment as an Associate Professor.

(4) This recommendation was approved by the Dean of the School of arts and Sciences and forwarded to the Office of Vice Chancellor Joseph Monroe.

(5) The FSU Committee on Tenure, Promotion, and Reappointment also recommended reappointment and sent these findings to Dr. Monroe.

(6) On December 4, 1989 at a faculty meeting with the Chancellor, Dr. Viswanathan publicly criticized Dr. Monroe for failing to emphasize publication and research.

(7) On December 7, 1989, Dr. Viswanathan was called to a conference with the Dean, and the Department Chair, where he was told that he needed to "adapt" to the situation at FSU.

(8) On January, 1990, Dr. Monroe wrote a memorandum to Chancellor Hackley recommending that Professor Viswanathan not be reappointed. He indicated in this document that this was based on Professor

Viswanathan's unhappiness with the teaching conditions at FSU. In a later letter, further explaining his reasons for the non-reappointment recommendation, he stated that the professor had "serious problems of adjustment."

(9) Chancellor Hackley accepted this recommendation and so notified Professor Viswanathan in a letter dated February 8, 1990.

The evidence presented tends to show that the negative recommendation of the Vice Chancellor could have been based in part on Professor Viswanathan's critical remarks. Because the remarks appear to be protected speech, this possible motivation on the Vice Chancellor's part would violate the First Amendment to the U.S. Constitution. A decision tainted in this manner would be specifically proscribed under 604B of the Code [of the University of North Carolina].

An appropriate remedy in cases where a non-reappointment decision is based on an impermissible reason is to conduct a new review of the faculty member's

credentials. Such a review should be removed from the prior taint, but should also allow the institution an opportunity to consider the current credentials of the faculty member. To accomplish these ends, the Committee recommends that the non-reappointment decision be reversed and that Professor Viswanathan be given an opportunity to request reappointment as an Associate Professor. This request, if made, should follow the procedures proscribed [sic] by FSU Tenure Regulations and should be initiated at the department level.

(Sd.) _____
John A. Garwood, Chairman
September 13, 1991

APPENDIX B

THE UNIVERSITY OF NORTH CAROLINA

General Administration

ELIZABETH BUNTING
Special Assistant to the President

TELEPHONE: (919)962-1000

June 16, 1992

Dr. Tenkasi M. Viswanathan
Blues Farm Road 1332, Apt. 15
Laurinburg, NC 28352

Dear Dr. Viswanathan:

On Friday, June 12, 1992, the Board of Governors considered and decided your appeal. I enclose the report adopted by the Board.

This notice to you will complete the Board of Governors procedures and action with regard to this case.

Sincerely,

(Sd.)_____
Elizabeth C. Bunting

THE UNIVERSITY OF NORTH CAROLINA is composed of the sixteen public senior institutions in North Carolina

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APPENDIX B

REPORT OF THE COMMITTEE ON PERSONNEL AND TENURE IN THE MATTER OF THE APPEAL OF DR. T.M. VISWANATHAN FAYETTEVILLE STATE UNIVERSITY

ADOPTED ON June 12, 1992

This is the second appeal of Dr. Viswanathan concerning a non-reappointment decision for the 1990-91 academic year. In the first appeal, Dr. Viswanathan contended that the negative decision resulted from retaliation for his exercise of his right of free speech. After a thorough review of the record of this case, this Committee recommended and the Board adopted the following finding:

> The evidence presented tends to show that the negative recommendation of the Vice Chancellor could have been based in part on Professor Viswanathan's critical remarks. Because the remarks appear to be protected speech, this possible motivation on the Vice Chancellor's part would violate the First Amendment to the U.S. Constitution. A decision tainted in this manner would be specifically proscribed under 604B of the Code [of the University of North Carolina].

As a remedy the Board remanded the case to Fayetteville State University, ordered that Dr. Viswanathan be given an opportunity to request reappointment and specified the nature of this review:

> Such a review should be removed from the prior taint, but should also allow the institution an opportunity to consider the current credentials of the faculty member.

This decision was adopted on September 13, 1991, and shortly thereafter Dr. Viswanathan submitted his credentials to the institution. The new review took place during the 1991-92 academic year and recently culminated in a decision not to reappoint Dr. Viswanathan. This new appeal is grounded on the contention that the new review process did not comply with the Board's order of September 13, 1991. The matter was referred to a subcommittee composed of Mr. Spaulding, Mr. Adams and Dr. Danieley.

The subcommittee met on Wednesday, June 3, 1992, and reviewed the record on appeal and thoroughly considered the contentions raised by Dr. Viswanathan. The Committee on Personnel and Tenure has received and approved the following subcommittee findings and recommendation.

The Board's first decision in this case contemplated a fair and untainted reconsideration of Dr. Viswanathan's request for reappointment. The evidence in the record supports the finding that this second review was consistent with the Board's order. The Committee therefore concludes

and recommends that the decision not to reappoint Dr. Viswanathan be upheld.

(Sd.)_____
John A. Garwood, Chairman
6-12-92
Date

APPENDIX B

NORTH CAROLINA
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO. 92 CVS 2024

FILED FEBRUARY 24, 1993

TENKASI M. VISWANATHAN :
Petitioner :
:
vs. :
:
UNIVERSITY OF :
NORTH CAROLINA AND :
FAYETTEVILLE STATE :
UNIVERSITY, :
Respondents :
:

ORDER ON PETITION FOR JUDICIAL REVIEW

THIS CAUSE coming to be heard and being heard before the undersigned Judge of Superior Court on the 8th of February, 1993, the Petitioner being present and represented by Steven J. O'Connor of Rose, Ray, Winfrey & O'Connor, P.A. and the Respondent being represented by Thomas J. Ziko, Special Deputy Attorney General, North Carolina Department of Justice; and the Court having heard the arguments of the parties and having reviewed the record as submitted in the case; the Court finds as follows:

1. This is not a contested case in which an administrative law judge made a recommended decision and therefore the court is not required to make any initial determinations under N.C. Gen. Stat. Section 150B-51(a).

2. The substantial rights of the Petitioner have been prejudiced because the agency's final decision was made upon unlawful procedure under N.C. Gen. Stat. Section 150B-51(b)(3) in that Petitioner was denied the process and procedure set out in Section 5 of the Fayetteville State University Tenure Policies and Regulations, specifically

being a conference with Jon M. Young, Acting Dean of the College of Arts and Sciences, and a hearing before the Fayetteville State University Hearing and Reconsideration Committee to determine whether the decision of John M. Young, Acting Dean of the College of Arts and Sciences, not to reappoint Petitioner to a second one-year appointment was based on impermissible reasons of Petitioner's exercise of rights guaranteed by the First Amendment of the United States Constitution and personal malice. Exception No.2 set out in the Petition for Judicial Review is sustained.

3. The Fayetteville State University Tenure Policies and Regulations did not require that Petitioner be notified of non-reappointment at least 90 days before the end of the 1991-92 academic year (the academic year during which the reappointment review ordered by the University of North Carolina Board of Governors, by order dated September 13, 1991, took place) and failure to give

any such notice was not unlawful procedure under N.C. Gen/. Stat. Section 150B-51(b)(3). Exception No. 3 set out in the Petition for Judicial Review is overruled.

4. Petitioner did not brief or argue Exception No. 1 set out in the Petition for Judicial review and the court hereby overrules such Exception No. 1.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that the agency's final decision in the above-captioned matter is reversed under N.C. Gen. Stat. Section 150B-51(b)(3) and it is ordered that the above-captioned case be remanded to Fayetteville State University, to give Petitioner an opportunity under Fayetteville State University's Tenure Policies and Regulations to have a conference with Jon M. Young, Acting Dean of the College of Arts and Sciences, and the further opportunity to request a review of Jon M. Young's decision by the Fayetteville State University Hearing and Reconsideration Committee, and that further procedure thereafter follow the Fayetteville State University Tenure Policies and Regulations.

This the 19 th day of February, 1993.

(Sd.)
QUENTIN T. SUMNER
SUPERIOR COURT JUDGE PRESIDING

APPENDIX B

FSU FAYETTEVILLE STATE UNIVERSITY
1200 Murchison Road, Newbold Station
Fayetteville, NC 28301-4298
(919)486-1111

OFFICE OF THE
BOARD OF TRUSTEES

October 14, 1993

Dr. T.M. Viswanathan
2615-B Confederate Drive
Wilmington NC 28403

Dear Dr. Viswanathan:

On Tuesday, October 5, 1993, the Board of Trustees of Fayetteville State University considered and decided your appeal. The Board carefully reviewed the entire transcripts, documents, report of the University's Hearing and Reconsideration Committee, the Chancellor's letter of August 2, 1993, as well as your documents of appeal. The

Board did not find that you provided any additional information that supported a reversal of the Chancellor's decision of non-reappointment to the faculty. The Board concluded to accept the Chancellor's decision and confirmed the Chancellor's authority to not reappoint you to a faculty position.

Should you desire to initiate review of this decision, you must submit a written notice of appeal to the Board of Governors within ten (10) days after receipt of this letter. The notice of appeal shall be addressed as follows:

Mr. Samuel H. Poole, Chairman
Board of Governors
c/o The University of North Carolina
910 Raleigh Road
P.O. Box 2688
Chapel Hill, NC 27515-2688

Sincerely,

(Sd.) Hector Mceachern, Chair
Board of Trustees
Fayetteville State University

cc Dr. Lloyd V. Hackley, Chancellor
FSU Board of Trustees

Fayetteville State University is a constituent institution of The University of North Carolina

APPENDIX B

SEAL of the University

THE UNIVERSITY OF NORTH CAROLINA

General Administration
POST OFFICE BOX 2688
CHAPEL HILL, NC 27515-2688

Appalachian State University
East Carolina University
Elizabeth City State University
Fayetteville State University
North Carolina Agricultural and
Technical State University
North Carolina Central University
North Carolina School of the Arts
North Carolina State University at
Raleigh
Pembroke State University
University of North Carolina at Asheville
University of North Carolina at
Chapel Hill
University of North Carolina at Charlotte
University of North Carolina at
Greensboro
University of North Carolina at
Wilmington
Western Carolina University
Winston-Salem State University

An Equal Opportunity
Affirmative Action
Employer

ROSALIND FUSE-HALL
Secretary of the University

Telephone (919)962-4615
FAX: (919) 962-2751

September 9, 1994

Dr. T. M. Viswanathan
Post Office Box 295
Newell, North Carolina 28126

Dear Dr. Viswanathan:

The Chairman of the Board of Governors has asked me to convey to you the enclosed copy of the report received and approved by the Board at its meeting held on September 9, 1994. This constitutes final University disposition of the question you advanced to the Board.

Sincerely,
(Sd.)_____
Rosalind Fuse-Hall

Enclosure
cc: Chancellor L.V. Hackley

APPENDIX B

REPORT OF THE COMMITTEE ON UNIVERSITY GOVERNANCE IN THE APPEAL OF T.M. VISWANATHAN

We bring to you today the appeal of a faculty member at Fayetteville State University. This case began in February 1990, when Dr. T.M. Viswanathan sought review of a

decision not to renew his tenure track contract as an Associate Professor in the Department of Mathematics and Computer Science. The FSU faculty Hearing and Reconsideration Committee disagreed with the nonrenewal decision. Chancellor Hackley, however, determined that the evidence did not support a finding of impermissible reasons and that the nonrenewal decision should stand. His decision was sustained by the FSU Board of Trustees.

On appeal to the Board of Governors, the Chancellor's decision was reversed and the case was remanded to FSU. Because there was some evidence that Dr. Viswanathan could have been penalized for a speech he had made on campus, the matter was remanded to FSU. When this decision was made on September 16, 1991, the faculty roster had been set for the 1991-1992 academic year. Thus, as a remedy, the Board of Governors directed that Professor Viswanathan be given an opportunity to apply for a new position in the Department of Mathematics and Computer Science for the 1992-93 academic year.

Thereafter Dr. Viswanathan did submit an application for employment and this was referred to the department chair. Although the math faculty recommended that a position be offered, the chair determined that Dr. Viswanthan's credentials did not match the department's instructional needs. This recommendation not to offer an appointment was forwarded to the Dean and the Vice Chancellor who both agreed with the chair's decision. Based upon these reviews, the Chancellor notified Dr. Viswanathan that a position would not be offered to him.

In a letter to President Spangler, Dr. Viswanathan questioned this outcome and asked whether the institutional decision complied with the Board's September 1991 order. The matter was then referred back to the Board which found in a decision dated June 12, 1992 that the review at FSU was consistent with the Board's earlier decision.

Professor Viswanathan then sought to appeal the decision not to offer him an appointment through the campus procedures for non-reappointment cases. When these

avenues were not made available to him, he filed suit in New Hanover County Superior Court, contending that he had a right to a campus review. The court agreed that he had a right to review in accord with the FSU procedure and ordered that this process should begin. The institutional steps of conference and a review before the Hearing and Reconsideration Committee began in March 1993.

In the administrative chain, the Dean and the Vice Chancellor met with Dr. Viswanathan and considered his contentions. Each of these officials, however, recommended that he not be appointed. Thereafter, Dr. Viswanathan sought review from the faculty Hearing and Reconsideration Committee. Although this committee found that there was evidence of impermissible reasons, the Chancellor did not accept this recommendation; he determined that the associate professor position would not be offered to Dr. Viswanathan. This decision was then sustained by the FSU Board of Trustees.

After an appeal was filed with the Board of Governors, the case was referred to the Committee on University Governance for its review and recommendation. A hearing was conducted on July 8, 1994, at which time presentations were made by Dr. Viswanathan and his attorney, and by Ms. Lessane on behalf of the Chancellor. After a thorough review of the Record, the written contentions of the parties and oral presentations made during this appeal, the Committee has made the following findings: First, we recognized that because the remedy directed by the Board after the first appeal was an opportunity to make application for a position, this case might be considered a review of refusal to hire. The Board has held in several recent cases that there is no appellate jurisdiction for such a review, and on this precedent, we found that the decision of the FSU Board of Trustees should be sustained. Second, we also recognized that this case initially was considered as an appeal from a decision not to reappoint a faculty member to a tenure track position. Because of this posture, we have also

undertaken a review as to whether Dr. Viswanathan carried his burden of proving that the institutional decision was based upon an impermissible reason. Considering all of the written submissions and oral presentations, we found that the burden of proof was not carried by Dr. Viswanathan in this case.

Thus, for all of the foregoing reasons, we recommend to you that the decision of the FSU Board of Trustees be sustained. Dr. Viswanathan has not shown he was improperly denied a position in the Department of Mathematics and computer Sciences at Fayetteville State University.

(Sd.) Mrs. Maxine H. O'Kelley, Chairman
Committee on University Governance

Sept. 9, 1994
(date)
Received and approved by
The Board of Governors
September 9, 1994
(Sd.) Rosalind Fuse-Hall, Secretary
The University of North Carolina

Sept. 9, 1994
(date)

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 4, 1997

No. 97-1735
CA-96-160-7-BR

Dr. Tenkasi M. VISWANATHAN,

Plaintiff-Appellant,

versus

FAYETTEVILLE STATE UNIVERSITY BOARD OF TRUSTEES, DR. LLOYD V. HACKLEY, Chancellor of Fayetteville State University, in his official and individual capacity; Dr. JON YOUNG in his official and individual capacity,

Defendants-Appellees.

ORDER

Appellant has filed a petition for rehearing.

The Court denies the petition for rehearing.

For the Court,

/s/ Patricia S. Connor
CLERK

APPENDIX D

TENURE POLICIES AND REGULATIONS OF FAYETTEVILLE STATE UNIVERSITY

SECTION 1. FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY

Fayetteville State University is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. This institution, therefore, supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.

Fayetteville State University shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.

Faculty and students of this institution shall share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.

APPENDIX D

TENURE POLICIES AND REGULATIONS OF FAYETTEVILLE STATE UNIVERSITY

SECTION 2. ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY

It is the policy of Fayetteville State University to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of this institution. Members of the faculty are expected to recognize that accuracy, forthrightness, and dignity befit their association with this institution and their position as men and women of learning. They should not represent themselves, without authorization, as spokesmen for Fayetteville State University.

Fayetteville State University will not penalize or discipline members of the faculty because of the exercise of

academic freedom in the lawful pursuit of their respective area of scholarly and professional interest and responsibility.

APPENDIX D

TENURE POLICIES AND REGULATIONS OF FAYETTEVILLE STATE UNIVERSITY

SECTION 3. ACADEMIC TENURE

Subsection A. GENERAL

Academic tenure refers to the conditions and guarantees that apply to a faculty member's employment. More specifically, it refers to the protection of a faculty member against involuntary suspension or discharge from employment or reduction in rank by Fayetteville State University except upon specified grounds and in accordance with the procedures provided in Section 4 and against termination of employment except as provided for in Section 6.

Academic tenure for faculty members is intended to secure their academic freedom and to help the institution

attract and retain faculty members of high quality. While academic tenure may be withheld on any grounds except those specifically stated to be impermissible under Section 5.A., a recommendation of permanent tenure requires that the faculty member's demonstrated professional competencies, his potential for future contributions, and institutional needs and resources be assessed.

Subsection B.

IN RELATION TO FACULTY RANKS

Academic tenure, as herein described, pertains exclusively to the employment of faculty members by appointment to specific faculty ranks. Such appointments may be for fixed terms of employment, automatically terminable when they expire (fixed term appointment); or they may be for probationary terms (probationary term appointment); or they may be continuous until retirement, death, or resignation (appointment with permanent tenure).

The faculty ranks to which appointments may be made and the incidents of academic tenure applicable to each are:

(1) **Instructor.** . . .

(2) **Assistant Professor.** . . .

(3)

Associate Professor. When a faculty member's initial appointment by the institution is to the rank of associate professor, the appointment shall be to a probationary term of one year. Unless at any point the associate professor is not reap-pointed, he shall be reappointed to a second one-year term and then to a three-year term before a decision is made whether to recommend permanent tenure at the same or higher rank or to offer a terminal appointment of one academic year. At least 90 days before the end of his first one-year appointment, the associate professor shall be given written notice whether, when his current term expires, he will be reappointed at the

rank of associate professor for another one-year term or not reappointed. At least 180 days before the end of his second consecutive one-year appointment, he shall be given written notice whether, when his current term expires, he will be reappointed at the rank of associate professor for a three-year term or not reappointed.

Before the end of the second year of his three-year term, he shall be given written notice whether he will be recommended for permanent tenure at the same or higher rank when his current term expires or not reappointed.

Failure to give the required notice of a decision not to reappoint at any point herein required has the same effect as a decision at that time to offer a terminal appointment at the same rank for one academic year. The decision herein required shall be made as provided in Section 3.C.

A promotion at any time from the rank of associate professor to that of professor confers permanent tenure from the effective date of the promotion. Since this promotion confers tenure, it must be finally approved by the president and the Board of Governors of the University of North Carolina.

(4) **Professor.**

(5) **Special Faculty Appointments.**

Subsection C.

GENERAL PROVISIONS

(1)

Initiation, Review, and Approval of Appointments, Pro-motions, and Reappointments. Each initial appointment with a fixed or probationary term, **each** promotion in rank, each reappointment to a fixed term, and each reappointment of an instructor, assistant professor, associate professor, or professor, whether or not the reappointment recommends the

conferral of permanent tenure shall be initiated by recommendation of the chairman of the department[6] concerned. In making a recommendation, the chairman shall consult with the department's assembled tenured faculty members. If the department has too few tenured faculty members to give a representative view of departmental opinion, the chairman shall consult with the senior members of the department who are familiar with the work of the candidate being considered.

The chairman's recommendation shall be sent to the division chairman, who shall forward it with his recommendation to the provost/ vice chancellor for academic affairs. The provost/vice chancellor will attach his recommendation and then forward all recommend-recommendations to the

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[6] "Department" is used herein as a generic term for departments and any other academic units to which faculty appointments are made. "Chairman" as a generic term for department chairman and any other heads of academic units to which faculty appointments are made.

chancellor. The chancellor, in arriving at this decision, shall consult with the Committee on Tenure, Promotion, Appointments, and Reappointment.[7]

If the chancellor decides not to recommend reappointment, promotion, or permanent tenure, he shall give the faculty member being considered a simple, unelaborated, written statement of the decision. This decision is final except as it may later be reviewed in accordance with the provisions of Section 5. If the chancellor concurs in a recommendation that will confer permanent tenure, he shall consult with the Board of Trustees and, unless dissuaded, forward, the recommendation to the president and Board of Governors for approval. All other favorable recommendations by the chancellor in regard to appointments, reappointments, and promotions shall be forwarded by him to the Board of

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[7] See the current constitution of the Fayetteville State University Senate for the composition of this committee.

Trustees for final approval unless the board delegates the authority to give final approval.

(2)

Decision Not to Reappoint Upon Expiration of Probationary Terms. The decision not to reappoint when a probationary term appointment as instructor, assistant professor, associate professor, or professor expires shall be made by the chairman of the department concerned after consulting with the department's assembled tenured faculty. If the department has too few tenured faculty members to give a representative view of departmental opinion, the chairman shall consult with senior members of the department who are familiar with the work of the candidate for reappointment. The chairman's decision is final except as it may be later reviewed in accordance with the provisions of Section 5. The chairman shall notify the faculty member of his decision by a simple, unelaborated statement that the

faculty member will not be reappointed. Each decision not to reappoint shall be communicated for information through the administrative channels prescribed for review had the decision been to reappoint.

(3) Early Promotion and Tenure.

(4) Visiting Faculty Members.

(5)

Terms and Conditions of Appointments.

The terms and conditions of each appointment and each reappointment to the faculty shall be set out in writing. A copy of the terms, signed by the chancellor, shall be delivered to the faculty member, and the chancellor shall retain a copy. The general terms and conditions of such appointments, including those provided herein, shall be either set out in the document of appointment or incorporated therein by clear reference to specified documents that shall be readily available to the faculty member.

Any special terms and conditions shall be clearly stated in the written appointment. Except as herein provided, no special terms or conditions may be included that vary with the general terms and conditions stated herein. The responsibility for initiating the inclusion of special terms and conditions in documents of appointments shall be with the chairman who recommends the appointment.

APPENDIX D

TENURE POLICIES AND REGULATIONS OF FAYETTEVILLE STATE UNIVERSITY

SECTION 5.

NONREAPPOINTMENT OF FACULTY MEMBERS ON PROBATIONARY APPOINTMENTS

Subsection A.

PERMISSIBLE AND IMPERMISSIBLE GROUNDS FOR NONREAPPOINTMENT

The decision whether to reappoint a faculty member when a probationary term appointment expires may be based on any factor considered relevant to the total institutional

interests, but it must consider the faculty member's demonstrated professional competence, his potential for future contributions, and institutional needs and resources. These considerations may form, in whole or in part, the basis of the ultimate decision, except that a decision not to reappoint may not be based upon (1) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution; (2) discrimination based upon the faculty member's race, sex, religion, or national origin; or (3) personal malice.

Subsection B.

CONFERENCE WITH DEPARTMENT CHAIRMAN

Within five days after receiving a written notice of non-reappointment, a faculty member may in writing request a private conference with his department chairman[6] to discuss

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[6] If the initial decision not to reappoint is made by an administrative officer other than the chancellor, substitute the name of that administrative officer for department chairman wherever the latter phrase appears. If the initial decision not to reappoint is made by

the reasons for non-reappointment. This request shall be granted and the conference held forthwith, within five days after receipt of the request if possible.

Within five days after the conference, the department chairman shall give the faculty member a simple, unelaborated, written statement of whether the original decision remains in effect.

Subsection C.

CONFERENCE WITH SUPERVISOR OF DEPARTMENT CHAIRMAN

Within five days after receiving notice that the original decision remains in effect, the faculty member may in writing request a conference with the department chairman's immediate administrative supervisor. This request shall be granted and the conference held forthwith, within five days after receipt of the request if possible.

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the chancellor or Board of Trustees, the faculty member who is not to be reappointed may seek review of that decision in accordance with the procedure set out in Section 501©(4) of The Code.

Within ten days after this conference, the reviewing administrative officer shall send a written evaluation of the matter to the faculty member and to the department chairman. The evaluation may be in the form of an unelaborated concurrence with the decision; an expression of disagreement with the decision, with or without supporting reasons; or a recommendation for reconsidering the decision, with or without suggestions for specific procedures for the reconsideration. Whatever form the evaluation may take, it is merely recommendatory and is not binding upon the department chairman or final as to the faculty member.

Within five days after receipt of an evaluation that disagrees with the decision or recommends its reconsideration, the department chairman shall give the faculty member and his immediate supervisor his response in writing.

Subsection D.

REQUEST FOR AND SCOPE OF REVIEW BY HEARING AND RECONSIDERATION COMMITTEE

Within five days after he receives notice of an unfavorable action resulting from the conference with the department chairman's supervisor, the faculty member may request that the Hearing and Reconsideration Committee review the decision. This review is limited solely to determining whether the decision not to reappoint was based upon any of the grounds stated to be impermissible in Subsection A of this section.

The request for review shall be written and addressed to the chairman of the committee. It shall specify the grounds upon which the faculty member contends that the decision was impermissibly based, with a short, plain statement of facts that the faculty member believes supports the contention.

Such a request constitutes on the faculty member's part: (1) a representation that he can prove his contention, and (2) an agreement that the institution may offer in rebuttal of his contention any relevant data within its possession.

The Hearing and Reconsideration Committee shall consider the request and grant a hearing if it determines that (a) the request contains a contention that the decision was impermissibly based under this section, and (b) the facts suggested, if established, will support the contention. A denial of the request finally confirms the decision. If the request is granted, a hearing shall be held within ten days after the request is received; the faculty member shall be given at least five days' notice of the hearing.

Subsection E.

CONDUCT OF HEARING

The hearing shall be conducted informally and in private. Only the members of the hearing committee, the faculty member, the department chairman, and such witnesses as may be called may attend, except that the faculty member and the department chairman may each be accompanied by a person of his choosing. A quorum for the hearing is a simple majority of the total committee membership. Committee members who hold an appointment

in the faculty member's department, who will testify as witnesses, or who have any other conflict of interest are disqualified from participating in that hearing. If the faculty member requests it and the chairman of the committee approves, a transcript of the proceedings shall be made and provided to the faculty member. The committee may consider only such evidence as is presented at the hearing and need consider only the evidence offered that it considers fair and reliable. All witnesses may be questioned by the committee members, the faculty member, the department chairman, and the representatives of the faculty members and chairman. Except as herein provided, the conduct of the hearing is under the committee chairman's control.

Subsection F.

HEARING PROCEDURE

The hearing shall begin with the faculty member's presentation of contentions, which shall be limited to those grounds specified in the request for a hearing and supported by such proof as he desires to offer. When the faculty

member has concluded this presentation, the committee shall recess to consider whether he has established a prima facie case. If it determines that the contention has not been so established, it shall notify the parties to the hearing and thereupon terminate the proceedings. Such termination confirms the decision not to reappoint. If it determines that rebuttal or explanation is desirable, it shall notify the parties and the hearing shall proceed. The department chairman may then present rebuttal of the faculty member's contentions, or in general support of the decision not to renew, such testimonial or documentary proofs as he desires to offer, including his own testimony.

At the end of this presentation, the Hearing and Reconsideration Committee shall consider the matter in executive session. The burden is upon the aggrieved faculty member to satisfy the committee that his contention is true.

Subsection G.

PROCEDURE AFTER HEARING

If the Hearing and Reconsideration Committee determines that the faculty member's contention has not been established, it shall, by a simple unelaborated statement, so notify him, the department chairman, and the department chairman's immediate supervisor. Such a determination confirms the decision not to reappoint. If the Hearing and Reconsideration Committee determines that the faculty member's contention has been satisfactorily established, it shall so notify him, the department chairman, and the department chairman's immediate supervisor by a written notice that shall also include a recommendation for corrective action by the department chairman.

Within five days after receiving such a recommendation, the department chairman shall notify the faculty member, his own immediate supervisor, and the chairman of the Hearing and Reconsideration Committee what modifications, if any, he will make with respect to the original decision not to reappoint.

If the department chairman fails to make a recommended modification in the original decision, the Hearing and Reconsideration Committee shall submit a report to the Chancellor containing the committee's findings and recommendation and what it considers to be appropriate action by the chancellor to resolve the matter.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

CHAPTER VI

ACADEMIC FREEDOM AND TENURE

SECTION 501 C.

Relation of the President to the University

Subsection (4) Subject to such regulations and limitations as may be prescribed by the Board of Governors, the faculties, staffs and student bodies of the constituent institutions, or any member thereof, may have the right to appeal the disposition of grievances to the Chancellor, and from the

Chancellor to the President, and from the President to the Board of Governors; provided, that appeals based on policies, rules or regulations adopted by the Board of Trustees shall be addressed initially to the Chancellor, and from the Chancellor to the Board of Trustees, and, where allowed, from the Board of Trustees to the Board of Governors; however, all appeals addressed to or request for hearings by the Board of Governors, from whatever source, shall be transmitted through the President.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

SECTION 502

CHANCELLORS OF CONSTITUENT INSTITUTIONS

Subsection 502 C.(4)

The Chancellor shall be the official

medium of communication between the Board of Trustees and all individuals, officials, agencies and organizations, both within and without the institution.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

CHAPTER VI

ACADEMIC FREEDOM AND TENURE

SECTION 600

FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY

(1) The University of North Carolina is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. The University, therefore, supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or

external restraints that would unreasonably restrict their academic endeavors.

(2) The University and each constituent institution shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.

Faculty and students of The University of North Carolina shall share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

CHAPTER VI

ACADEMIC FREEDOM AND TENURE

SECTION 601

ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY

(1) It is the policy of The University of North Carolina to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of the constituent institutions. Members of the faculty are expected to recognize that accuracy, forthrightness, and dignity befit their association with this institution and their position as men and women of learning. They should not represent themselves, without authorization, as spokesmen for The University of North Carolina or any of its constituent institutions.

(2) The University and its constituent institutions shall not penalize or discipline members of the faculty because of the exercise of academic freedom in the lawful pursuit of their respective area of scholarly and professional interest and responsibility.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

CHAPTER VI

ACADEMIC FREEDOM AND TENURE

SECTION 602

ACADEMIC TENURE

(1) To promote and protect the academic freedom of its faculty, the Board of Trustees of each constituent institution shall adopt policies and regulations governing academic tenure.

(2) ...

(3) The tenure policies and regulations of each constituent institution shall prescribe the procedures by which decisions concerning appointment, reappointment, promotion and the conferral of permanent tenure shall be made. The lengths of terms of appointment that do not carry permanent tenure and those faculty ranks or

titles whose holders shall be eligible for permanent tenure shall be prescribed. The institutional policies and regulations also shall prescribe the intervals at which the review of candidates for reappointment and promotion, including the conferral of permanent tenure, shall occur.

The tenure policies and regulations of each institution, which shall include the complete text of Chapter Six of the Code, shall be published by the institution and distributed to its faculty members.

(4) ...

(5) ...

(6) Institutional tenure policies and regulations shall distinguish among the following:

(a) the non-reappointment (or nonrenewal) of a faculty member at the expiration of a specific term of service;

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

CHAPTER VI

ACADEMIC FREEDOM AND TENURE

SECTION 604

APPOINTMENT, NONREAPPOINTMENT AND REQUIREMENTS OF NOTICE AND REVIEW

SECTION 604 A.
Notice of Reappointment or Non-reappointment

(1) The decision not to reappoint a faculty member at the expiration of a fixed term of service shall be made by the appropriate institutional faculty and administrative officers early enough to permit timely notice to be given. For full-time faculty at the rank of instructor, assistant professor, associate professor or professor, the minimum requirement for timely notice shall be as follows:

(a) during the first year of service at the institution. The faculty member shall be given not less than 90 calendar days' notice before his employment contract expires;

(b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before his employment contract expires;

(c) after two or more years of continuous service at th institution, the faculty member shall be given not less than twelve months' notice before his employment contract expires.

(2) Notice of reappointment or nonreappointment shall be written. If the decision is not to reappoint, then failure o give timely notice of nonreappointment will oblige the Chancellor thereafter to offer a terminal appointment of one academic year.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

SECTION 604 B.

Impermissible Reasons for Nonreappointment

In no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or (b) discrimination based upon the faculty member's race, sex, religion, or national origin; or (c) personal malice.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

APPENDIX [TO THE CODE]

DELEGATIONS OF DUTY AND AUTHORITY TO BOARDS OF TRUSTEES

[As adopted by the Board of Governors, 7/7/72, and amended through 8/1/88]

Pursuant to authority vested in it by the General Statutes, and consistent with the provisions of the Code of

The University of North Carolina, the Board of Governors hereby delegates to the Boards of Trustees of the constituent institutions of The University of North Carolina the following duties and powers:

I. ACADEMIC AND ADMINISTRATIVE PERSONNEL

A. Appointment and Compensation

1. With respect to all faculty positions with permanent tenure and all senior administrative positions, namely vice chancellors, provosts, deans, and directors of major educational and public service activities, the Chancellor, following consultation with the Board of trustees, shall forward to the President recommendations with respect to such appointments, promotions and compensation; if the president concurs in such recommendations, he shall forward them to the Board of governors for approval.

2. With respect to all faculty and administrative positions, other than those identified in subparagraph 1 above, and other than those subject to the State Personnel act, the Chancellor shall forward his

recommendations for appointment, promotion and compensation to the Board of Trustees; subject to applicable provisions of the University Code and to such policies as may be established by the Board of Governors, the action of the Board of Trustees with respect to such personnel action shall be final.

APPENDIX F

CIVIL RIGHT STATUTES

42 U.S.C. SECTION 1981

EQUAL RIGHTS UNDER THE LAW

(a) **Statement of equal rights**

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) **"Make and enforce contracts" defined**

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

© **Protection against impairment**

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

(As amended Pub. L.102-166, title I. Section 101, November 21, 1991, 105 Stat.1071.)

Amendments 1991 – Pub. L.102-166 designated existing provisions as subsec. (a) and added subsect. (b) and ©.

APPENDIX F

42 U.S.C. SECTION 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or

Territory, or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX G

Judicial Review Statute

N.C.G.S. CHAPTER - 150B: ARTICLE 4

N.C.G.S. Section 150B-43. Right to judicial review.

Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such

other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.

N.C.G.S., Section 150B-51. Scope of Review

(b) Standard of Review. --- . . . the court reviewing a final decision may affirm the decision of the agency or remand the case for further proceedings. It may also reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency" findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions;

(2) In excess of statutory authority or jurisdiction of the agency;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or

(6) Arbitrary or capricious.